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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC - 2 2002

Federal Communications Commission
Office of the Secretary

_____)	
In the Matter of)	
)	
Request to Update Default Compensation))	
Rate For Dial-Around Calls From Payphones)	RM No. 10568
)	
and)	
)	
Petition for Rulemaking to Establish A Revised))	
Per-Call Payphone compensation Rate)	

**REPLY COMMENTS OF THE
AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecommunications Users Committee (the "**Ad** Hoc Committee" or "Ad Hoc") submits these Reply Comments in response to Petitions filed by the American Public Communications Council ("APCC) and the Regional Bell Operating Company Payphone Coalition ("RBOC Payphone Coalition") (collectively the "Petitioners") seeking an increase in the per call compensation rate for dial-around payphone calls.

Ad Hoc Committee's members purchase substantial quantities of telecommunications services, including services associated with pay telephone compensation surcharges. With the advent of the Commission's decisions implementing Section 276 of the Communications Act of 1934, as amended (the "**Ad**"), these subscribers have experienced both substantial increases in the rates and charges attributable to toll free calls received from pay telephones. and increased instances of *payphone fraud*.

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In these Reply Comments, Ad Hoc ~~concurs~~ with the commenters' concerns regarding the RBOC Payphone Coalition's and APCC's modifications to the payphone cost model. Ad Hoc also fully endorses the proposal that the Commission initiate a Notice of Inquiry as the appropriate next step for evaluating the myriad of issues and implications arising out of the RBOC Payphone Coalition and APCC Petitions, not least of which is the relationship between higher per call rates and payphone fraud.

1. COMMENTS FILED IN RESPONSE TO THE APCC AND RBOC **PAYPHONE** COALITION PETITIONS IDENTIFY LEGITIMATE CONCERNS REGARDING THE PETITIONERS' DEVELOPMENT OF COSTS AND CALL **VOLUMES** FOR MARGINAL PAYPHONES.

The APCC and the RBOC Payphone Coalition characterize their requests for a significantly increased dial-around per ~~call~~ payphone rate as simply the result of "updating some of the inputs" to be plugged into the cost model developed by the Commission in the Third Report and Order² with a few "small modifications." Ad Hoc agrees with commenters that this is not the ~~case~~. Rather, the Petitioners have made a number of improper revisions to the cost model that both inflate payphone costs and depress call volumes, thus resulting in a nearly doubled dial-around per call charge.

With respect to the APCC study, commenters raise legitimate concerns regarding (1) the size and composition of the survey ~~sample~~;⁴ (2) misapplication of the

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) (First Report and Order) (subsequent history omitted).

² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-128, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (1999) ("Third Report and Order").

³ APCC Comments at 2; RBOC Payphone Coalition Comments at 2.

⁴ Joint Comments of ATX Communications, Inc., Business Telecom, Inc., and US LEC Corp. (hereinafter, "ATX et al.") at 9; ATBT Comments at 11-14; Texas Attorney General Comments at 3.

criteria defining a "marginal" **payphone**;⁵ (3) the inclusion *of* collection costs, contrary to the approved **methodology**;⁶ and (4) the reduction *of* call volumes based on uncollected **billings**.⁷ For all of **the** various reasons detailed by the **commenters**, these changes in methodology are based on unreliable analyses and are inconsistent with prior Commission orders.

Similarly, the comments demonstrate that the RBOC Payphone Coalition's study takes liberties with the Commission's approach by deviating from the approved definition of a "marginal" **payphone** and including payphones that may simply **be** unprofitable.⁸ This revision to the Commission's methodology **is** likely to **cause** call volumes attributed to marginal payphones to be significantly understated. In addition, there are legitimate challenges to the RBOC Payphone Coalition's interest calculations and inclusion of a bad debt expense.⁹

For these reasons, the Commission should find that the **APCC** and RBOC Payphone Coalition Petitions are, on their face, materially flawed and therefore unpersuasive.

⁵ **ATBT** Comments at 12-14.

⁶ **ATBT** Comments at 19, **IDT** at 14.

⁷ **AT&T** Comments at 14-15.

⁸ The number of calls per marginal **station** used by the RBOC Coalition **is a derived** number, rather than **an** actual count **of** calls **at** marginal payphones. **See** RBOC Payphone Coalition Petition at 12. **As several** parties have pointed out, there **are** problems **with the** methods used to obtain this number. **ATBT** Comments at 15-16; **ATX et al.** Comments at 10-11

⁹ **ATBT** Comments at 19-20; **IDT** Comments at 14-15.

II. IN LIEU OF RULING ON THE RBOC PAYPHONE COALITION AND APCC PETITIONS THE COMMISSION SHOULD ISSUE A NOTICE OF INQUIRY.

Even if the Petitioners implemented corrections suggested by the commenters, there remains a fundamental problem with the Petitioners' approach: It is not the panacea to declining payphone usage; nor will it ensure that payphones are deployed widely in a manner that is "to the benefit of the general public."¹⁰

In fact the Commission recognized implicitly that a simple recalculation of the dial-around call compensation rate to address marketplace failures cannot be used to resolve distortions in the marketplace. As noted by IDT, the Commission in the *Third Report and Order* already set forth the guidelines for revisiting the existing default dial-around rate of \$.24 per payphone call in the event the payphone marketplace was not fully competitive by January 31, 2001. Specifically, the Commission stated that: "the parties may petition the Commission regarding the default compensation amount, related issues pursuant to technological advances and the expected resultant market changes."¹¹

The foregoing language is dispositive of what action the Commission must take in entertaining the RBOC and APCC Petitions. The Commission did not intend to simply insert new inputs into the cost model and regularly update the default amount. Rather the Commission properly recognized that a request for a new default amount – up or down – warranted investigation. This investigation, in the form of a Notice of Inquiry that would consider the interaction of multiple factors, should be the Commission's next step.

Even were the language of the *Third Report and Order* not so clear, commenters have raised numerous open issues that would (or at least should) directly impact the Commission's review of the default per call rate. These include, for example,

¹⁰ See 47 U.S.C. § 276(b)(1).

¹¹ IDT Comments at 3, quoting *Third Report and Order*, 14 FCC Rcd at 2571, ¶ 59. See also ATX et al. Comments at 3.

whether the reduced deployment of payphones has in fact adversely affected the public interest, particularly in light of the expanding deployment of wireless services; the extent to which payphone service providers receive compensation from other unregulated sources; and whether a cost model based on the marginal payphone is appropriate in today's marketplace

The Ad Hoc Committee also strongly supports commenters' recommendations that the Commission, in collaboration with state public utilities commissions, should revisit the use of public interest payphones as a means of addressing failures of deployment (if any) that may exist.¹² Under the existing cost methodology, per call compensation is based on the costs associated with a marginal payphone. Thus, the lower the call volumes at marginal payphones, the higher the per call compensation amount at all payphones. the greater the profits generated at higher volume payphone locations. Because the Commission has not conditioned receipt of per call compensation on providing payphone service at underserved locations, the existing cost methodology does not and will not protect against the elimination of payphones at such locations. Rather, the proposed doubling of the per-call rate will only exacerbate the problem – encouraging payphone service providers to maximize profits by eliminating marginal payphones in favor of installing more subsidized, high-volume, high-profit payphones. The Commission needs to take a fresh look at how to deal with this economic distortion. Absent a linkage between receipt of per call compensation and the provision of marginal payphones, Ad Hoc believes the public interest payphone is the right solution to ensure that payphone service continues to be provided in underserved locations.

¹² Sprint Comments at 8-9; Telstar Comments at 5; WorldCom Comments at 9 (*citing* Recommended Decision of Federal-State Joint Board on Universal Service, CC Docket 96-45, July 10, 2002).

Finally, one issue raised by WorldCom and **ATX et al.**, which directly and adversely affects members of the Ad Hoc Committee, is **the** extent to which an increased default rate will encourage fraudulent activity.” Based on the experience of its members, Ad Hoc believes the answer to this question is yes. Over a two-year period, one Ad Hoc member was charged dial-around compensation charges in excess of one million dollars that the member believes are fraudulent in nature.¹⁴ **ATX et al.** provides other examples.¹⁵ During the payphone proceeding, the Commission rejected possible alternatives for deterring fraud – such as exempting calls that do not meet a minimum duration requirement – thereby frustrating toll free service subscribers’ **efforts** to effectively defend against payphone fraud. Since fraud constitutes a serious problem at the existing default rate, Ad Hoc is extremely concerned that an increase in the dial around rate will only exacerbate this problem.

A Notice of Inquiry is a good regulatory vehicle for ascertaining how many toll free subscribers are experiencing fraud. the extent to which **the** Commission **can** expect an increase in fraud if it approves a higher dial around rate, and if **so**, whether there are alternative payment methodologies that would more successfully deter fraud than the “carrier pays” approach in place today. For example, under a “modified carrier pays” approach, callers would be notified when a toll free number is blocked and would have the option to override the blocked number by depositing a coin in the payphone instrument. This scheme would better benefit the public interest since it gives toll free service subscribers and their callers a more practical alternative to the **all** or nothing, pay or block

¹³ WorldCom Comments at 14-15; **ATX et al.** Comments at 6-7.

¹⁴ **A complaint** related to **this** activity is already on file with **the Commission**.

¹⁵ **ATX et al.** Comments at 7.

approach, it is more consistent with a market-based **system** than the current system; and it reduces the likelihood of fraud and abuse by payphone **service** providers. Although the Commission recently reasserted **its** finding that a caller pays system would be in violation of the Telephone Operator Consumer Services Improvement Act ("TOCSIA"),¹⁶ the modified carrier approach does not raise the same policy considerations and therefore is a viable option that merits further scrutiny.

CONCLUSION

For the foregoing reasons, Ad Hoc urges the Commission to postpone further action on the APCC and RBOC Payphone Coalition Petitions requesting an increase in the dial-around payphone compensation rate until it has completed a Notice of Inquiry proceeding. Anything **less** would countermand the Commission's own guidelines for addressing the per call compensation rate **over** the long term.

Respectfully submitted,

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¹⁶ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-128, Fifth Order on Reconsideration and Order on Reconsideration. FCC 02-292 (released October 23, 2002) at ¶ 3.

Certificate of Service

I, Michaeleen I. Williams, hereby certify that true and correct copies of the preceding Reply Comments of the Ad Hoc Telecommunications Users Committee was served this 14th day of November, 2002 via facsimile upon the following:

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